



July 25, 2001

Mr. Craig H. Smith  
Deputy General Counsel  
Texas Workers' Compensation Commission  
4000 South IH-35  
Austin, Texas 78704

OR2001-3224

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149832.

The Workers' Compensation Commission (the "commission") received a request for any and all documents relating to any investigations or complaints concerning a named individual. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 402.083 of the Labor Code provides that "[i]nformation in or derived from a claim file regarding an employee is confidential and may not be disclosed by the commission except as provided by this subtitle." This office has interpreted section 402.083 to protect only that "information in or derived from a claim file that explicitly or implicitly discloses the identities of employees who file workers' compensation claims." Open Records Decision No. 619 at 10 (1993). You have highlighted the information in the submitted attachments B, C, and D that you believe is excepted from disclosure under section 402.083. Upon review of that information, we conclude that all of the information you seek to withhold either implicitly or explicitly discloses the identity of claimants, with the possible exception of the employer's name in certain cases. Information revealing the date of injury, as well as an injured employee's name, beneficiary name,

commission claim number, social security number, home telephone number, home address, and date of birth we believe implicitly or explicitly identifies claimants and is therefore excepted from disclosure under section 552.101 in conjunction with section 402.083 of the Labor Code. We are unable to determine whether release of the identity of the employer of a claimant would implicitly identify the claimant in every case. Therefore, we conclude that only in those cases where release of the employer's identity would reveal the claimant's identity may the identity of an employer be withheld. As for the remainder of the information in attachments B, C, and D, we will address your arguments under sections 552.108 and 552.111, as well as under the Medical Practice Act.

The Medical Practice Act (the "MPA"), chapter 159 of the Occupations Code, provides at section 159.002:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

We agree that the information you have identified as medical records may only be released in accordance with the MPA. *See* Open Records Decision No. 598 (1991). The medical records must be released upon the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990).

Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." However, section 552.108 applies only to records that can be characterized as the records of law enforcement agencies or prosecutors. Thus, section 552.108 applies to the records created by an agency, or a portion of an agency, whose primary function is to investigate crimes and enforce the criminal laws. *See* Open Records Decision Nos. 493 at 2 (1988), 287 at 2 (1981). It generally does not apply to the records created by an agency whose chief function is essentially regulatory in nature. Open Records Decision No. 199 (1978). Therefore, we conclude that the remaining information in attachments B, C and D may not be withheld under section 552.108.

Section 552.111 excepts from disclosure “an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.” In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Texas Attorney Gen.*, 37 S.W.3d 152 (Tex. App.--Austin 2001, no pet.). An agency’s policymaking functions do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. ORD 615 at 5-6. Additionally, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Arlington Indep. Sch. Dist.*, 37 S.W.3d at 160; ORD 615 at 4-5. Upon review of the information in attachments B, C, and D, we conclude that none of this information is excepted from disclosure under section 552.111. We will next address your arguments for the information in attachment E.

You assert that the information in attachment E, a Compliance and Practices investigation file, is excepted from disclosure under section 402.092 of the Labor Code. In relevant part, section 402.092 provides:

(a) Information maintained in the investigation files of the commission is confidential and may not be disclosed except:

- (1) in a criminal proceeding;
- (2) in a hearing conducted by the commission
- (3) on a judicial determination of good cause
- (4) to a governmental agency, political subdivision, or regulatory body if the disclosure is necessary or proper for the enforcement of the laws of this or another state or of the United States.

...

(d) For purposes of this section, “investigation file” means any information compiled or maintained by the commission with respect to a commission investigation authorized by law.

TWCC investigates the conduct of persons subject to the Texas Workers’ Compensation Act for compliance with statutes and rules relating to workers’ compensation. Labor Code

§ 414.005. You relate that the responsive information concerns a possible violation of the Labor Code, the Texas Workers' Compensation Act, and the commission rules implementing the Texas Workers' Compensation Act. None of the exceptions to confidentiality appear to apply to the information in attachment E. Based on your representations and our review of the submitted materials, we conclude that the information in attachment E is made confidential by section 402.092(a) of the Labor Code, and must therefore be withheld under section 552.101 of the Government Code.

To summarize, the date of injury, as well as an injured employee's name, beneficiary name, commission claim number, social security number, home telephone number, home address, and date of birth are excepted from disclosure under section 552.101 in conjunction with section 402.083 of the Labor Code, and must be redacted from the information to be released from attachments B, C, and D. In those cases where release of an employer's identity would reveal a claimant's identity, the employer's identity is excepted from disclosure under section 552.101 in conjunction with section 402.083 of the Labor Code as well. The remaining information in attachments B, C, and D is not excepted under either section 552.108 or 552.111 and must be released to the requestor, with the exception of the medical records you have identified, which may only be released in accordance with the MPA. The information in attachment E is made confidential by section 402.092(a) of the Labor Code, and must therefore be withheld under section 552.101 of the Government Code in its entirety.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental

body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/seg

Ref: ID# 149832

Enc. Submitted documents

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